IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.186 OF 1997

M.Bhasker Kini & Co.Pvt.Ltd. ...Petitioners

Versus

Hassarams' Industries Ltd. ...Respondents

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Mr.A.T.Kukreja i/b Kukreja & Co. for Petitioners.

None for Respondents.

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CORAM: A.M.KHANWILKAR, J.

JULY 20, 2005.

P.C.

1. Heard Counsel for Petitioners. None appears for the Respondent Company though served and has entered appearance through Counsel.

2. The case of the Petitioners is that the Petitioners raised bills against the Respondent Company in respect of services extended by the Petitioners to export consignments of the Respondent Company to the United States of America.

Four separate bills were raised for different amounts aggregating to Rs.7,19,845/- (Rupees Seven Lakhs Nineteen Thousand Eight Hundred Forty-five). The Respondent Company has acknowledged its liability to pay the said amount. In fact, the Respondent Company offered to pay the said amount by three cheques drawn in favour of the Petitioners in discharge of their obligation. However, all the three cheques were returned back as dishonoured.

3. The Petitioners persued the matter with the Respondent Company and inspite of assurance given from time to time to pay the amount, no amount was paid to the Petitioner Company. Eventually, Petitioners gave statutory notice on 7th September 1996. No reply was given to the statutory notice nor any amount was offered or paid by the Respondent Company. The Petitioners eventually filed the present Petition under Section 439 of the Companies Act in February 1997. The Respondent Company although was served before admission of the Petition, did not chose to appear. Petition was admitted and admission has been duly published in the newspapers as well as Official

Gazette. The Respondent Company has filed reply before this Court in January 1999, opposing relief claimed in the Petition. Interestingly, in the reply affidavit which is filed, the Respondent Company has acknowledged its debt and liability to pay sum of Rs.7,19,845/- (Rupees Seven Lakhs Nineteen Thousand Eight Hundred Forty-five). It has also conceded that the Company is in financial difficulties. In Para 6 of the reply affidavit, offer is made by the Respondent Company that it would like to discharge the liability by paying amount in monthly instalments of Rs.50,000/- (Rupees Fifty Thousand) each. However, there is nothing on record to show that the Respondent Company stood by the commitment made in the reply affidavit. On the other hand, Petitioners contend that no amount has been paid by the Respondent Company so far. The explanation offered in the reply affidavit, in my opinion, is only a ruse to buy time. It cannot be said to be a bonafide explanation nor is it possible to even remotely suggest that the Respondents will succeed in law. The only grievance made by the Respondents is that the Petitioners have not given four forms and

shipping bills against the amount claimed from the Company. As is rightly contended by the Petitioners, this objection was never taken nor conveyed to the Petitioners before institution of this Petition. In other words, the defence is not bonafide.

4. Viewed in this perspective, the legal presumption against the Respondent Company that it is unable to pay its debt has remained unrebutted.

5. Accordingly, this Petition should succeed. The same is made absolute in terms of prayer clauses (a) and (b) with cost. Ordered accordingly.

A.M.KHANWILKAR, J.